1946.

Examined

File No. Cr. A. Bel. / 1 / 46.

Legal DEPARTMENT

A BRANCH

P. 28 (E) 1946

Subject :—

Criminal Appeals in the High Court of Bombay against the orders of acquittal from Belgaum District.

".True copy - Original papers being of bad quality - Destroyed."

V. V. Velankar

Superintendent,
D Branch, Legal Department.

Cr. A. Bel. / 46.

925-A.

G. R., G. D., No. 2408, dated 22-6-22.] Std. Sects. 78 e.

DOCKET SHEET

(3)

Subject:—

File No. Cr. A. Bel/46

Legal **DEPT.**

A. **BRANCH.**

References:—

Date.	To whom sent.	Notes and instructions.
		Submitted. The file Cr. A-Bel/46 has been examined with a view to replace, the important notes etc. on bad quality papers, on good quality papers and the following suggestions are put up for approval :- I. The following pages may be preserved (a) as they are — pp 3-17, 33-45, 49-73, 77-83, 87-91 and 95-103 (b) after getting them retyped — pp. 47, 85. II. The following pages may be removed and filed separately, in a provisional file to be destroyed subsecuently as being pages of unimportant notes. — pp. 1, 19-31, 75 and 93. CN. Sd/ 19-1 Submitted 18/2/49

Below opinion in the case of Imperator v/s 1) Bapal alias Shiroji Nalband 2) Shankar Chanabasappa Ganji, 3) Samansab Sultansab Hukeri and 4) Algouda Basaprabhu Patil. (accused)

.....

No. 2561

Office of the Government Pleader, High Court,
Bombay. Dated 30th July 1945.

Forwarded with compliments to the Remembrancer of Legal Affairs, Bombay, with reference to his no.5592 dated 28th July 1945.

2. All the papers received from him are herewith returned.

Government Pleader, High Court.

6441
A 31-7-45

:25

Cont'd. 1st

Opinion in the case of Imperator v/s Samansab Sultansab Hukeri (accused)

.....

The charge against the accused was that on 31.12.44 at about 6 A.M. he was caught at the control naka transporting 144 seers of rice without the permit of the District Magistrate, thus contravening the D.M's order dated 9.3.44 issued under Rule 81 of the D.I.Rules. The accused pleaded guilty to the charge. He was convicted and sentenced to pay a fine of Rs.10/- In awarding sentence the Magistrate took a lenient view in view of the fact that the accused had admitted his guilt voluntarily and as the rice was being taken by the accused for his consumption. The reasons given by the learned Magistrate for passing the lenient sentence are neither satisfactory nor convincing. They should not have taken into consideration as mitigating circumstances. Such sentences render food control an impossible task.

B S Rao

Bombay.)
30th July 1945.) Government Pleader, High Court.

8-9

Cases. 12-5-45

Opinion in the case of Imperator v/s Algouda Basaprabhu Patil (accused)

.....

The charge against the accused was that on 31.12.44 he was found at the Control Naka in the limits of Managutti transporting 56 seers of rice from Belgaum to Badkundri without the permit of D.M. and thus contravening the D.M's order no.7.A.R.64 dated 6.3.44 an offence punishable under Rule 81(4) D.I.Rules. The accused pleaded guilty to the charge; he was convicted and sentenced to pay a fine of Rs.5/-.There is no justification for passing such a lenient sentence. The reason given by the learned Magistrate should not have been taken into account as mitigating circumstances. I have already observed that such lenient sentence would render food control as impossible task.

B.J. Rao

Bombay.)
30th July 1945) Government Pleader, High Court.

H-9

Case 2.

Opinion in the case of Imperator v/s Bapalal Shiroj Nalbanc (accused)

....

That the accused was charged with transporting on 14.1.45 71 lbs of cotton seed from Sankeshwar to Amboli without a permit and that contravening the District Magistrate's Order no.W.A.R.64 dated 6.1.45 punishable under Rule 81(4) D.I.Rules. The accused pleaded guilty to the charge. He was convicted and sentenced to pay a fine of Rs.2/-. The Magistrate took a lenient view in awarding punishment because the accused admitted his guilt - voluntarily and because of the trivial nature of the offence. The sentence appears to be lenient. The reasons given by the Magistrate do not justify. The passing of such a lenient sentence Such nominal sentence encourage the breaking of control order and render the control an impossible task.

B S Rao

Bombay.)
30th July 1945) Government Pleader, High Court.

Opinion in the case of Imperator v/s Shankar Chanabasappa Ganji. (accused)

.....

The accused was charged with having transported on 14.1.45, 59½ seers of Turdal from Sankeshwar to Gadhinglaj without a permit and thus contravened the D.M's order No.W.A.R.64 dated 6.1.45 punishable under Rule 81(4) D.I.Rules. The accused pleaded guilty to the charge; he was convicted and sentenced to pay a fine of Rs.10/-. The Magistrate passed the lenient sentence as the accused admitted his guilt voluntarily. The sentence is quite lenient. Such a lenient sentence will have the effect of encouraging the breaking of control orders and make food control an impossible task.

B S Rao

Bombay.
30th July 1945

Government Pleader, High Court.

4147:45

Criminal Applications.

In the High Court, Bombay---
for enhancement of the sentences.
(Belgaum).

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 5905
Bombay Castle, 9th August 1945.

Letter from the District Magistrate, Belgaum, No.M.A.G.15

dated the 20th July 1945 - Forwarding papers in the cases noted

In the Court of the Resident Magistrate, First Class, Hukeri.	in the margin and
(i) Criminal Case No.12-A of 1945. Imperator V/s Samansab Sultansab Hukeri..... Accused.	requesting that applications in revi
(ii) Criminal Case No.12-B of 1945. Imperator V/s Algouda Basaprabhu Patil..... Accused.	under section 439 of the Code of Criminal Procedure, 1898, may
(iii) Criminal Case No.22 of 1945. Imperator V/s Babalal Shiroj Nalband..... Accused.	be made to the High Court, Bombay, for
(iv) Criminal Case No.24 of 1945. Imperator V/s Shankar Chanabasappa Gadji..... Accused.	enhancement of the sentences passed by the Resident Magistr
(Offence under rule 81(4) of the Defence of India Rules).	First Class, Hukeri (i) 17th March 1945,

(ii) 17th March 1945, (iii) 16th March 1945 and (iv) 14th March 1945 respectively in respect of the accused in the cases noted in the margin.

RESOLUTION.- The Government Pleader, High Court, Bombay, is directed to present applications in revision to the High Cour Bombay, under section 439 of the Code of Criminal Procedure, 189 for enhancement of the sentences passed by the Resident Magistra First Class, Hukeri on (i) 17th March 1945, (ii) 17th March 1945 (iii) 16th March 1945 and (iv) 14th March 1945 respectively in respect of the accused in the cases referred to.

By order of the Governor of Bombay,

Original

for (P. N. MOOS,
(Secretary to Government.

To
The Home Department,
The Commissioner, Southern Division.
The District Magistrate, Belgaum.

The Government Pleader, High Court, Bombay
(with the papers of the case received with the ~~xxxxxx~~ letter of the District Magistrate, Belgaum, above referred to).

Submitted. after issue
Awaits result of the application

kill 9/11

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10 8 ~~A~~ S. Dr 1928

Judgment recorded by the High Court in case of Imperator Vs. Somansab Sultansab Hukeri and Algouda Basaprabhu Patil, in the Criminal Revision Applications Nos. 448 and 449 of 1945(By Government).

In Criminal Revn. No.448/45.
The Government Pleader for the Crown.
Mr. N.M.Hungund for the accused(Appointed).

In Criminal Revn. No.449 of 1945.
The Government Pleader for the Crown.
Mr. D.M.Athavale, for the accused(Appointed).

(Coram: Lokur and Bavdekar, JJ.)

8th February 1946.

Per Lokur, J.:- These are two applications made on behalf of the Government of Bombay for enhancement of the sentences passed on the two opponents by the Resident Magistrate, First Class, Hukeri on their convictions under Rule 81(4) of the Defence of India Rules, 1939 for contravening the provisions of the Belgaum District Msgistrate's Order No. W.A.R.64 dated 9-3-1944. The learned Magistrate imposed a fine of Rs. 10 and Rs.5/- on the two opponents respectively. The opponent in application No. 448 of 1945 was found removing five bags containing 144 seers of rice worth Rs.48/- from Belgaum to Hukeri without the District Magistrate's permit. The opponent in application No. 449 of 1945 was found removing 56 seers of rice from Belgaum to Badkundri without the requisite permit of the District Magistrate. Both of them admitted that they were doing so, but pleaded that they were taking them for their own consumption. When the charge was framed and read out to them both of them pleaded guilty to the

charge. The learned Magistrate did not go merely on their pleas but decided the cases on their merits. He stated in his order that the District Magistrate's Order was explicit and was widely published and that t the opponents had been actually caught while carring rice without permits from the District Magistrate.

Notices having been issued to the opponents to show cause why the sentences passed on them should not be enhanced , they are entitled under Section 439(6) of the Criminal Procedure Code to show cause against their convictions and the learned Advocates on their behalf have challenged the validity of their convictions on the ground that their pleas of guilty merely amounted to the admission of the removal of rice without the District Magistrate's permits and that in fact they had no knowledge of the District Magistrate's Order which had not been duly published as required by Rule 119 of the Defence of India Rules, 1939. It is true that there is no direct evidence to prove the publication of the order as required by Rule 119 (1) nor is there any evidence to show that the opponents were aware of the order when they were found removing rice from one place to another. It is also equally true that they did not statein their statements that they were not aware of the order. The order was specified in the charge and when the charge was read out and explained to them, they pleaded guilty to it without even suggesting that they were unaware of the order. It is,however, urged on their behalf that it was incumbent on the prosecution to produce the order and also to prove that the order

was known to the opponents. It is also urged that the order had to be published as required by Rule 119 (1) of the Defence of India Rules before it could take effect. In the absence of any evidence regarding the publication of the order it may be taken for the purpose of these cases that the order was not published as required by Rule 119. But that does not mean that the order itself was invalid. Our attention was drawn to several decided cases regarding the interpretation and the effect of Rule 119(1). There are two cases which support the contention urged on behalf of the opponents. In Shakoor Hasan Vs. Emperor A.I.R.1944 Nag. 40. Niyogi J.(sitting singly) held that any order passed by the District Magistrate under Rule 81(2) of the Defence of India Rules could not bind the person concerned unless it was published in accordance with Rule 119(1). In Public Prosecutor Vs. Narayana Reddi. A.I.R. 1945 Mad. 192, Chandrasekhara Aiyar, J.(sitting singly) observed:-

" The prosecution has to show before relying on the order prohibiting transport of grain that there was publication of the order in accordance with what the authority, officer or person issuing it considered was best adapted for conveying information to the persons whom the order concerns."

With respect, we think that these decisions have gone far beyond what is provided for in Rule 119(1) of the Defence of India Rules. That Rule runs as follows:-

" Save as otherwise expressly provided in these Rules, every authority, officer or persons who makes any order in writing in pursuance of any of these Rules

shall, in the case of an order of a general or affecti
a class of persons, publish, notice of such order
in such manner as may, in the opinion of such
authority, officer or person, be best adapted
for informing persons whom the order concerns. ..:

and thereupon the persons, corporation, firm or person concerned shall be deemed to have been duly informed of the order"

The provisions of this Rule have been considered by this Court inseveral recent cases. In Emperor Vs. Mhatarji Bhau, 47 Bom,L.R143(to which I was a party) Divatia J. considered the manner in which an order to be issued by a District Magistrate should be published under Rule 119 and it was held that the order in that case had not been so published But in that case the accused had specifically pleaded that he was not aware of the District Magistrate's order. Similarly, in Emperor Vs. V.Leslie GWilt,47 Bom.L.R. 431 the question considere was whether a presumption of knowledge could rise under Rule 119(1) where it had been found that the order had not been duly published. In neither of those cases was it held that in the absence of the necessary publication the order itself was ineffective or that the order could not be deemed to have come into force until its publication under Rule 119. This was made clear in Emperor Vs. Rayangouda Lingangouda,46,Bom, L.R.495, where it was held that if in fact the individual concerned knew perfectly well that an order had been passed against him and had acquired his knowledge by means other than Rule 119(1) it could not be said that in the absence of such

publication he was not liable to be convicted. Sen. J. observed:-

" The consequence of failure to carry out the provisions of Rule 119 is practical rather than legal. The result is that the prosecution loses a simple method of establishing beyond contraversy that the person affected had received notice of the order affecting him, and that the person affected will find it easier to establish the fact that he had not received notice, assuming that in any particular case the burden of proof was upon him to prove affirmatively that he had not received notice."

It is necessary to bear in mind that Rule 81(4) of the Defence of India Rules, 1939, which creates the offence of which the opponents have been convicted, does not make any particular state of mind an essential ingredient of that offence. All that the sub-rule says is that if any person contravenes any of the provisions of Rule 81, he shall be punishable etc.... This may be compared with section 188 of the Indian Penal Code which says:-

" Whoever, knowing that by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, "disobeys such direction.... shall be punishable under this section ".

Thus in an offence under this section knowledge is an essential ingredient which has to be proved by the prosecution. It is true that in order to constitute a crime, there must be mens rea on the

part of the accused. But the question is one of burden of proof. In Bank of New South Wales Vs. Piper, (1897) Appeal Cases, P. 383 at P. 389 , Sir Richard Couch in delivering the judgment of the Judicial Committee of the Privy Council, observed:-

" It was strongly urged by the respondent's counsel that in order to the constitution of a crime, whether common-law or statutory, there must be mens rea on the part of the accused, and that he may avoid conviction by showing that such mens rea did not exist. That is a proposition which their Lordships do not desire to dispute ; but the questions whether a particular intent is made an element of the statutory crime, and when that is not the case, whether there was an absence of mens rea in the accused, are questions entirely different, and depend upon different considerations. In cases when the statute requires a motive to be proved as an essential element of the crime, the prosecution must fail if it is not proved. On the other hand, the absence of mens rea really consists in an honest and reasonable belief entertained by the accused of the existence of facts which, if true, would make the act charged against him innocent."

This would be more or less akin to a mistake of fact contemplated by section 79 of the Indian Penal Code, and the burden of proving the necessary circumstances would be on the accused under section 105 of the Indian Evidence Act. On this principle if Rule 81(4) of the Defence of India

Rules had required that the opponents should be proved to have contravened the District Magistrate's order knowingly , then knowledge of the accused having been made one of the essential elements of the offence by the Rule, the prosecution would have had to prove it before the opponents could be convicted although that burden of proof could have been discharged with the help of Rule 119(1) of the Defence of India Rules, in which case a plea by the opponents that they had no knowledge of the order would not have been available to them inas much as when it was once shown that the order was duly published as required by that Rule, they would have been deemed to have been duly informed of the order. But if the prosecution failed to prove due publication , and also failed to prove by other means that the opponents knew of the order, then the opponents would have entitled to succeed on the ground that the statute had made a particular state of mind an element of the crime, and the prosecution had failed to prove that state of mind in them. It is hardly necessary to point out that in Bank of New South Wales Vs. Piper(1897) A.C.P. 383, their Lordships meant by the words" a particular intent" all those states of mind, which a statute which creates an offence regards as necessary that an accused person should have, before he could be said to be guilty of the offence. But Rule 81(4) of the Defence of India Rules does not say that the opponents should have contravened the order referred to in the rule knowingly. We do not mean to say that even so an accused person could be convicted of an offence under that Rule, whether he knew of the order which he is alleged to have

contravened or not. It is implict in every conviction for an offence under Rule 81(4) of the Defence of India Rules that an accused person knew of the order, but the statute not having made any particular intent or any particular knowledge an essential ingredient of the offence, the prosecution has merely in the first instance to make out that there was an order and that the accused contravened it, and it would be necessary for the accused to allege that he did not know of the order and to lead prima facie evidence of it, which might, of course, include any statement which he might make upon the point. The defence would be a defence of absence of mens rea inasmuch as the accused was not aware of the order. If an accused person made such a plea, it would be necessary for the prosecution to rebut it, since, as already stated, it would be implicted in the conviction of an accused person that he knew of the order, and an accused person could not be convicted unless the Court came to the conclusion that the defence which he adopted was false, and the prosecution, upon which there is the final burden of proving that an accused person is guilty of the offence, must discharge the burden upon it to prove that there was no absence of mens rea. But as in this case no plea of ignorance of the order was put forward by either of the opponents, it was not incumbent on the prosecution to prove their knowledge of the existence of the order. Hence the failure of the District Magistrate to publish the order as required by Rule 119(1) did not affect the opponents' liability under Rule 81(4) if they contravened that order. We, therefore, hold that the opponents have been rightly convicted.

As regards the sentences passed on them, both of them frankly admitted the removal of rice outside the District, but pleaded that they were taking if for their own consumption . As regards the opponent in application No.448 of 1945; it is to be noted that he said that he was taking rice to Hukeri from Belgaum, but he is not a resident of Hukeri, but of Masarguppi. Hukeri is a taluka place and he could not have required as many as five bags of rice for his own consumption nor had he any reason to take the bags to Hukeri. Presumably he must have been taking them for carrying on business and making a profit. In these circumstances, we think that fine of Rs.10/- only is grossly inadequate and we sould increase it to Rs. 100/-.

The opponent in application No.449 of 1945 was carrying rice to his own village Badkundri and the quantity of rice also was comparatively less, 56 seers only. But he wilfully contravened the District Magistrate's order and we think that the nominal fine of Rs.5 imposed upon him by the learned Magistrate is not sufficient to meet the ends of justice; we increase it to Rs. 25.

Rules made absolute.

Judgment recorded by the High Court in Criminal Rev Application No.450 of 1945 in the case of Emperor Vs. Babalal Shiraj Malbari. with Cri.Revn.No.451/45

The Government Pleader for the Crown, in Revn.450 of 45.
Mr.N.S.Ambhirdi for the accused (appointed)
The Government Pleader for the Crown, in Revn. 451 of 45.
Mr.M.F.M.reddi for the accused (appointed)

Coram:- Lokur and Kavdekar JJ.

6the February 1946.

Per Lokur J.

These are applications made by the Government of the province of Bombay for enchancment of the sentences imposed upon the opponents in the two applications who were tried by the Resident Magistrate, First Class, Hukeri for contravening the Belgaum District Magistrate's order No.W.A.R.84 dated 6-1-1945 and thereby committing an offence punishable under rule 81(4) of the Defence of India Rules, 1939. The opponent in application No.450 of 1945 was caught at Shragur Naka as he was removing 71 lbs. of Cotton seeds from Sankeshwar to Amboli within the limits of a native state without the permit of the District Magistrate as required by the said order. The opponent in application No.451 of 1945 was found removing 59½ seers of Tur Dal from Sankeshwar to Gandhiglaj within the limits of a native State without the permit of the District Magistrate. They were prosecuted for thus carrying prohibited food stuffs in contravention of the District Magistrate's order. Both of them admitted that they did contravene the order and pleaded guilty to the charge. The learned Magistrate, however went into the merits, of the case and convicted bothe the opponents under rule 81(4) of the Defence of India Rules, 1939, and imposed a fine of Rs.5 and Rs.10 respectively on the two opponents.

As they have been called upon th show cause

why the sentences should not be enhanced, they are entitled under section 439(6) of the Criminal Procedure Code to show cause against their conviction and both the learned Advocates who have appeared on their behalf have challenged the validity of their conviction. It is pointed out that although they have pleaded guilty to the charge , it is open to them to show that the order itself does not cover the removal of food grains from Belgaum District into a native State and in ignorance of the implications of the order both the opponents admitted the fact of the removal and thought that they had thereby contravened the order. In these circumstances we think that it is open to them to show that the order had notreallynot been contravened and the plea of guilty merely amounted to the admission of the fact of the removal without the District Magistrate's permit. The order of the District Magistrate has not been produced in the two cases, but it is to be found on page 231 of Part I of the Bombay Government Gazette, dated January 18, 1945. The operative part of that order runs as follows:

"No person shall remove any of the foodgrains or other articles specified in Schedule I below this order, by road, rail or river from any place within the limits of the Belgaum District to any place in the Bombay Province outside the limits of the said District except under and in accordance with a permit granted by the District Magistrate, Belgaum:

Povided that no permission shall be necessary to carry cotton seeds up to 20 seers."

Cotton seeds and Tur Dal are both included in the first Schedule appended to the Order. From the wording of the above order it is obvious that what is prohibited is the removal of the articles mentioned in Schedule I from any place within the limits of the Belgaum District to any place in the Bombay Provence outside those limits. Ambali and Gandhiglaj are not places in the Bombay Province outside the limits of the Belgaum District. 'Province' is defined in section 3 subsection 43

[illegible]

45 43

39 25

of the General Clauses Act, 1897 as meaning "a Presidency, a Governor's province , a Lieutenant- Governor's province or a Chief Commissioner's province " and a native State can by no stretch of imagination beregarded as a part of the Bombay Province. It is not shown that in removing cotton seeds and Fur Dal from the Belgaum District to Amboli and Gadhinglanj the the opponents had to pass through any place outside the Belgaum District but within the Bombay Province. In that case it might be said that before reaching thoses places in the native State they did take the rice from the Belgaum District into a place within the Bombay Province outside the Belgaum District. In the absence of such evidence it is no offence to,remove those food grains from a place within the Belgaum District directly to a native State. It must , therefore, be held that the opponents have not contravened the order and have not committed any offence punishable under Rule 81(4) of the Defence of India Rules, 1939.

We, therefore, set aside the convictionsof both the opponents and order that they be acquitted and discharged. Thexfix fines , if recovered from them, should be refunded, and the ~~xxxxx~~ articles ordered to be ~~forfeited~~ for-feited should be restored to them. If they have been already sold , them the proceeds should be refunded.

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47 35 27

Criminal Applications.
In the High Court, Bombay- for enhancement of the sentences (Belgaum)

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 1835
Bombay Castle, 5th March 1946.

Read Government Resolution, Legal Department No. 5905, dated the 9th August 1945.

Letters from the Government Pleader, High Court, Bombay Nos. 667, 669, 671 and 673, dated the 18th February 1946 Stating that Criminal Revision Applications Nos. 448, 449, 450 and 451 of 1945 filed by Government for enhancement of the sentences respectively in the cases noted in the margin were, heard by the High Court, Bombay on the 8th February 1946, when the following orders were passed:-

In the Court of the Resident Magistrate, First Class, Hukeri.
(i) Criminal Case No. 12-A of 1945.
Imperator
Vs.
Samansab Sultansab Kukeri - Accused.

(ii) Criminal Case No. 12-B of 1945
Imperator
Vs.
Algouda Basaprabhu Patil - Accused.

(iii) Criminal case No. 22 of 1945.
Imperator
Vs.
Babalal Shiroj Nalband -- Accused.

(iv) Criminal Case No. 24 of 1945.
Imperator
Vs.
Shankar Chanabasappa Ganji-Accused.
(Offence under rule 81 (4) of the Defence of India Rules).

(I) In Criminal Revision Application No. 448 of 45 "The Court makes the Rule absolute, confirms the conviction of the opponent and increases the fine from Rs. 10 to 100/-". (II) In criminal Revision Application No. 449 of 1945:- "The Court makes the rule absolute, confirms the conviction of the opponent and increases the fine from Rs. 5 to Rs. 25/-". (III) In Criminal Revision Application No. 450 of 1945. "The Court discharges the rule, sets aside the conviction of the opponent and orders that he be acquitted and discharged. The fine, if recovered, should be refunded to him and the articles ordered to be forfeited should be restored to him. If they have been already sold, then their proceeds should be refunded." (IV) In Criminal Revision Application No. 451 of 1945. "The Court discharges the rule, sets aside the conviction of the opponent and orders that he be acquitted and discharged. The fine, if recovered, should be refunded, and the articles ordered to be forfeited should be restored to him. If they have been alreddy sold then their proceeds should be refunded."

Letter from the Government Pleader, High Court, Bombay, No. 683, dated the 19th February 1946 Forwarding an uncertified copy of the High Court Judgment.

RESOLUTION:- The result of the applications is recorded.

By order of the Governor of Bombay,
Sd/- V. B. Raju
V. B. RAJU

Deputy Secretary to Government.

To,

The Home Department,
The Commissioner, Southern Division,
The District Magistrate, Belgaum.

Opinion in the Case of Imperator Vs. Babasaheb Rajesaheb Gadekar(Accused).

This is a very interesting case which is an eloquent testimony to the credulity of human nature even in this twentieth century. I did not realise that there were people still in existence who believed in practical alchemy and were ready to part with their fortunes to master the art and science of producing gold out of mere wheaten flour, a little mercury and the last but the most important, a little of a charmed powder!

The complainant, a ruined gambler, went to the accused and gave him eight thousand rupees for a small quantity of a charmed powder, in the hope that he would also be able to produce gold out of nothing, as was apparently done by accused No.2 in the complainant's presence, not once but five times ! Accused No.2, though he may not be anything else, is at least very deft and nimble with his fingers. With great adroitness, he did succeed in introducing a small beat of gold in the dough. He is certainly a master of the sleight of hand.

The poor Magistrate deludes himself and believes the yarns he heard in his childhood that alchemy is a practical though esoteric proposition. I have no doubt, the

High Court judges do not share the Magistrate's belief, and they will readily take the view that even if the experiment were repeated, the little charmed powder would not produce gold !

To say the least, the learned trial Magistrate's judgment is perverse. He has decided against the prosecution on every conceivable point, He has missed the wood for the trees. I know that there are some blemishes in the prosecution case. The slip of paper(Ex.B) on which the complainant noted the numbers of the eighty currency notes may be an 'afterthought The letter, Ex.4-A could be proved only by Appasaheb, who has not been examined. Ex.4 A seems to be suspicious. The fact that accused No.2 produced the seventy eight currency notes from a derelict place may not show that he was in exclusive possession of those notes. According to the rulings of our High Court, at best, that fact only shows that the accused knew when they were secreted. See 14 Bombay 260(F.B) and 47 Bombay Law Reporter Page 63. Even so, broadly speaking, the prosecution case has a genuine ring of truth about it, and this is certainly a very fit case for an appeal under Section 417 of the Criminal Procedure Code.

Bombay.
Dated 15th April 1946

Government Pleader, High Court.

53 587 1945

Criminal Appeals.
In the High Court Bombay--
against acquittal (Belgaum).

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 3223
Bombay Castle, 1st ~~April~~ May 1946.

Letter from the District Magistrate, Belgaum No. M.A.G. ,dated the 6th April 1946.- Forwarding

In the Court of the Resident Magistrate, First Class, Hukeri.. Case No. 78 of 1945.	papers in the case noted in the margin and requesting that an appeal under section 417 of the Code of Criminal
Emperor vs. (1) Irappa Kallappa Adivi (2) Babasaheb Rajesaheb Gadekar.	
(Offence under section 420 of the Indian Penal Code).	

Procedure, 1898, may be made to the High Court, Bombay against the order of acquittal passed by the Resident Magistrate, First Class, Hukeri, on the 24th November 1945 in respect of the accused in the case noted in the margin.

RESOLUTION :- The Government Pleader, High Court, Bombay, is directed to present an appeal to the High Court, Bombay, under section 417 of the Code of Criminal Procedure, 1898, against the order of acquittal passed by the Resident Magistrate, First Class, Hukeri, on the 24th November 1945 in respect of the accused in the case referred to.

By order of the Governor of Bombay,

Rest for signs.
SAO 29/4 CA letter to the D.M. is also put up below for signs.)

Original

V. B. Raju.

Additional Deputy Secretary to Government.

PBx 1/14

AD.S

Issued 1/5

BM

To
The Home Department,
The Commissioner, Southern Division,
The District Magistrate, Belgaum,
The Government Pleader, High Court, Bombay(with the papers of the case received with the letter of the District Magistrate, Belgaum above referred to)

Criminal Appeals.
In the High Court, Bombay
against acquittal (Belgaum).

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 5142

Bombay Castle, 20th July 1946.

Read Government Resolution, Legal Department,

In the Court of the Resident Magistrate, First Class, Hukeri. Case No. 78 of 1945. Emperor Vs. (1) Irappa Kallappa Adivi (2) Babasaheb Rajesaheb Gadekar. (Offence under section 420 of the Indian Penal Code).	No. 3223, dated the 1st May 1946. # Letter from the

Government Pleader, High Court, Bombay, No. 2018, dated the 24th June 1946 - Stating that Criminal Appeal No. 305 of 1946 filed by Government against the acquittal of the accused in the case noted in the margin, was summarily dismissed by the High Court, Bombay, on the 24th June 1946.

RESOLUTION.- The result of the appeal is recorded.

By order of the Governor of Bombay,

Original
A.R. KHAN,
Deputy Secretary to Government.

To
The Home Department,
The Commissioner, Southern Division,
The District Magistrate, Belgaum.

LDR.

No. 2068 99 4 123

L. [illegible] Dept.
I No. 5792
Ap. 1-7-46

From

THE GOVERNMENT PLEADER, HIGH COURT,
Bombay.

To The Secretary to Govt. Legal Deptt, Bombay,

Bombay 27-6- 1946.

Sir,

Referring to G.R.L.D. No. 3223

dated 1-5- 1946. I have the

to inform you that the

case noted in the margin

was heard by the High

Court on 24-6-46.

when the following Order

was passed :-

Criminal Appeal No.305 of 1946.

Imperator
Vs.
Babasaheb Rajasaheb Gadakar.

" Dismissed."
No Judgment"

L. D.
- 8. JUN 946

Your obedient Servant,

Government Pleader, High Court, Bombay.

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Subd.

2. The result of the appeal has already been recorded. No action is necessary on this bill.

3. Should D.H., signify bill 15/8

~~A.H.~~
31/7

~~A.S.~~ for
31/7